

ORIGINAL FILED

2005 DEC -2 PM 3:59

CLERK'S DISTRICT COURT
NORTHERN DISTRICT OF OHIO
S-S-S-S-S-S-S-S-S-S-S-S-S-S
TOLEDO

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Jaime Dearcia
285 Shoop Avenue
Lot 22
Wauseon, OH 43567

3:05 CV 7456
Case No.

(Hon.) JUDGE JAMES G. CARR

Plaintiff,
vs

**DEFENDANT A & K RAILROAD
MATERIALS, INC.'S NOTICE OF
REMOVAL**

A & K Railroad Materials, Inc.
c/o Sherry Teets
2750 Hill Avenue
Toledo, OH 43607.

and

John Doe Number One
Present name and address unknown.

Defendants.

Defendant A & K Railroad Materials, Inc. hereby files its Notice of Removal and states as follows:

1. An action has been commenced against defendant A & K Railroad Materials, Inc. which is now pending in the Court of Common Pleas of Lucas County, Ohio, said action being entitled "Jaime Dearcia v. A & K Railroad Materials, Inc., et al.." bearing Case No. CI05-6283 on the docket of said court.

2. A copy of the Complaint was served on defendant A & K Railroad Materials, Inc. on November 14, 2005. (See Exhibit A attached hereto.)

3. This Notice of Removal is being filed within thirty (30) days after receipt by defendant A & K Railroad Materials, Inc. of the Complaint and is timely filed in accordance with 28 U.S.C. §1446(b).

4. This is a civil action over which this court has jurisdiction pursuant to 28 U.S.C. §1332 which may be removed to this court pursuant to 28 U.S.C. §1441 because defendant A & K Railroad Materials, Inc. is incorporated in the State of California and has its principal place of business in Salt Lake City, Utah. The amount in controversy requirement of 28 U.S.C. §1332(b) is met.

WHEREFORE, defendant A & K Railroad Materials, Inc. requests that the court enter this cause on its docket and entertain such further proceedings herein as may be proper and authorized by law.

Respectfully submitted,

EASTMAN & SMITH LTD.

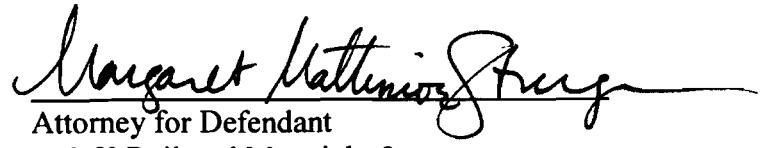


David F. Cooper (0006176)
(E-MAIL: DFCooper@eastmansmith.com)
Margaret Mattimoe Sturgeon (0046527)
(E-MAIL: PMSturgeon@eastmansmith.com)
One SeaGate, 24th Floor
P.O. Box 10032
Toledo, Ohio 43699-0032
Telephone: (419) 241-6000
Telecopier: (419) 247-1777

Attorneys for Defendant
A & K Railroad Materials, Inc.

PROOF OF SERVICE

A copy of the foregoing Notice of Removal has been sent this 2nd day of December, 2005 to Kevin J. Boissoneault, Esq. and Bonnie E. Haims, Esq., Gallon, Takacs, Boissoneault & Schaffer Co., L.P.A., 3516 Granite Circle, Toledo, OH 43617-1172, attorneys for plaintiff.


Margaret Mattern
Attorney for Defendant
A & K Railroad Materials, Inc.

h:\home\jatillman\pms\dearcia\notice of removal.doc

LUCAS COUNTY COMMON PLEAS COURT
CORNER ADAMS & ERIE STREETS
TOLEDO, OHIO 43624

**SUMMONS
CIVIL ACTION**

A AND K RAILROAD MATERIALS INC
C/O SHERRY TEETS
2750 HILL AVENUE
TOLEDO, OH 43607

G-4801-CI-0200506283-000

JUDGE: JAMES D. BATES

You have the right to seek legal counsel. If you cannot afford a lawyer, you may contact the Legal Services of Northwest Ohio. If you do not qualify for services by the Legal Services of Northwest Ohio and do not know an attorney you may contact the Toledo Bar Association's Lawyer Referral Service

You have been named as a defendant in a Complaint filed in this Court by the plaintiff named below. A copy of the Complaint is attached to this Summons.

You are hereby summoned and required to serve upon the plaintiff's attorney, or upon the plaintiff, if he has no attorney of record, a copy of an answer to the complaint, within twenty-eight (28) days after you receive this Summons, exclusive of the day of service. Your answer must be filed with the Clerk of Court of Common Pleas within three (3) days after the service of a copy of the Answer on the plaintiff's attorney.

If you fail to serve and file your Answer, judgment by default will be rendered against you for the relief demanded in the Complaint.

PLAINTIFF (S)
DEARCIA JAIME
285 SHOOP AVENUE LOT 22
WAUSBON, OH 43567

ATTORNEY FOR PLAINTIFF(S)
KEVIN J BOISSONEAULT
GALLON, TAKACS BOISSONEAULT
& SCHAFER CO LPA
3516 GRANITE CIRCLE
TOLEDO OHIO 43617-1172
BERNIE QUILTER
CLERK OF COURTS

Date: November 14, 2005

By: H. Shuey
Deputy Clerk

FILED
LUCAS COUNTY
2005 NOV 10 AM 11:54
COMMON PLEAS COURT
BERNIE DUILTER
FRANKFORT COURTS

IN THE COURT OF COMMON PLEAS, LUCAS COUNTY, OHIO

JAIME DEARCIA
285 Shoop Avenue, Lot 22
Wauseon, Ohio 43567

* Case No.: CI-200506283
* JUDGE: ASSIGNED TO JUDGE BATES

Plaintiff,

COMPLAINT WITH JURY DEMAND
ENDORSED THEREON

-vs-

A & K RAILROAD
MATERIALS, INC.
c/o Sherry Teets
2750 Hill Avenue
Toledo, Ohio 43607

* Kevin J. Boissoneault (#0040180)
* Bonnie E. Haims (#0072465)
GALLON, TAKACS, BOISSONEAULT

and,

JOHN DOE NUMBER ONE
Whose present name and address
is unknown

* & SCHAFER CO., L.P.A.
Plattys@gallonlaw.com
3516 Granite Circle
Toledo, Ohio 43617-1172
Phone: (419) 843-2001
Fax: (419) 841-2608
Attorneys for Plaintiff

Defendants.

Now comes Plaintiff, by and through counsel, Kevin J. Boissoneault, Esq., Bonnie E. Haims, Esq., and Gallon, Takacs, Boissoneault & Schaffer Co., L.P.A. Plaintiff states that this action was originally filed in this Court, was assigned to Judge Bates as case number CI-03-5256

Law Office of
TAKACS, BOISSONEAULT
& SCHAFER CO., L.P.A.
100 GALLON BUILDING
6 GRANITE CIRCLE
DO. OHIO 43617-1172

and is being refiled pursuant to a voluntary dismissal filed on November 12, 2004, reserving the right to refile within one year against the Defendants. For their complaint, Plaintiffs allege and aver the following:

GENERAL ALLEGATIONS

1. At all times material hereto, Plaintiff Jaime Dearica was working in the City of Toledo, Lucas County, Ohio.
2. At all times material hereto, Plaintiff Jaime Dearica was an employee of Defendant A & K Railroad Materials, Inc (hereinafter referred to as "A & K Railroad") and/or John Doe Number One.
3. At all times material hereto, Defendant A & K Railroad and/or John Doe Number One is a California Corporation, duly licensed and doing business in the State of Ohio as a supplier of railroad parts, materials, and services on Hill Avenue in the City of Toledo, Lucas County, Ohio. Any reference to Defendant A & K Railroad and/or John Doe Number One will include reference to its owners, agents, servants, and employees who at all pertinent times were acting within the course and scope of their employment and/or agency with Defendant A & K Railroad and/or John Doe Number One.
4. At all times material hereto, Defendant John Doe Number One, whose present name and address remain unknown despite Plaintiff's best and reasonable efforts to ascertain same, was a corporation and/or other legal entity which conducted business in Toledo, Lucas County, Ohio.

COUNT ONE

5. Plaintiff realleges and incorporates by reference the above paragraphs as if same were fully set forth herein.

6. On or about July 1, 2002, Plaintiff Jaime Dearcia was acting in the course and scope of his employment with Defendant A & K Railroad and/or John Doe Number One.

7. On or about July 1, 2002, Plaintiff Jaime Dearcia was seriously injured when he was thrown from a forklift owned by and/or under the control of Defendant A & K Railroad.

8. On or about July 1, 2002, Defendant A & K Railroad and/or John Doe Number One, and/or their agents, and/or their servants, and/or their employees intentionally, purposefully, knowingly, and with substantial certainty that they would cause Plaintiff Jaime Dearcia and others similarly situated to suffer serious injuries, including, but not limited to, the following:

- a. Knowingly required Plaintiff Jaime Dearcia to operate the subject forklift which was not furnished with the proper personal restraint equipment, including, but not limited to, a seatbelt;
- b. Knowingly allowed the subject forklift to be operated without all required equipment, causing severe injury;
- c. Knowingly failed to warn employees, including Plaintiff Jaime Dearcia, that the aforementioned forklift exposed them to danger of serious injuries, despite knowing the tendency of the forklift to uncontrollably jerk and shake when being operated;
- d. Knowingly failed to remove or eliminate a known dangerous process and/or procedure and/or condition in the aforementioned forklift, despite knowing the tendency of the forklift to injure its employees;
- e. Knowingly operating the subject forklift without proper safety equipment in violation of government and/or industry safety regulations and standards;
- f. Knowingly required Plaintiff Jaime Dearcia to work as set forth herein

Law Office Of
DAN TANACE, BORZENKOV
& SCHAFER CO., L.P.A.
11 JACK GALLON BUILDING
3518 GRANITE CIRCLE
CLEVELAND, OHIO 44114-4172

above despite knowing the danger of serious injuries to operators of the subject forklift was substantially certain to occur under the circumstances as set forth herein above; and,

g. Knowingly failed to train and/or adequately train Plaintiff Jaime Dearcia regarding safe ways to operate and work with the subject forklift.

9. All of the foregoing actions and inactions on the part of Defendant A & K Railroad and/or John Doe Number One demonstrate, at a minimum, their knowledge of a dangerous process, procedure and condition with inadequately equipped forklifts, inadequate safety training, and knowledge of the dangerous condition of the subject forklift.

10. All of the foregoing demonstrates Defendant A & K Railroad and/or John Doe Number One's knowledge, at a minimum, that serious injury was substantially certain to occur as the subject forklift was inadequately equipped to protect any operators and because Plaintiff Jaime Dearcia was told to operate the forklift by his employer, A & K Railroad and/or John Doe Number One.

11. Finally, at a minimum, Defendant A & K Railroad and/or John Doe Number One required Plaintiff Jaime Dearcia to be exposed to all of the foregoing as part of his employment at the time of the subject incident.

12. The intentional and purposeful acts of Defendant A & K Railroad and/or John Doe Number One directly and proximately caused Plaintiff Jaime Dearcia to sustain injuries and damages, including, but not limited to, the following:

- a. Severe and permanent injuries;
- b. Medical expenses, past and future;
- c. Pain and suffering, past and future;

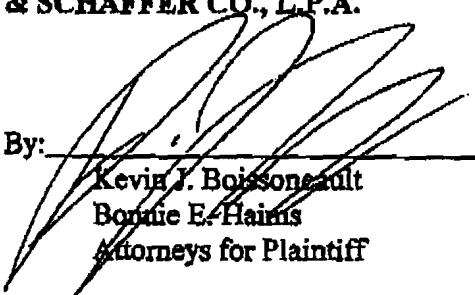
- d. Loss of earnings and earning capacity, past and future; and,
- e. Disruption of lifestyle.

WHEREFORE, Plaintiff respectfully prays for judgment on the above mentioned Counts against Defendant A & K Railroad Materials, Inc. and/or John Doe Number One for an award of damages in any sum of money in excess of Twenty-Five Thousand Dollars (\$25,000.00), adequate to compensate Plaintiff for his damages, plus costs and expenses incurred herein, prejudgment interest at the highest statutory rate allowed by law from the date the Plaintiff's cause of action accrued, court costs, and such other relief as the Court deems just and equitable.

Respectfully submitted,

**GALLON, TAKACS, BOISSONEAULT
& SCHAFER CO., L.P.A.**

By: _____


Kevin J. Boissonsault
Bonnie E. Haims
Attorneys for Plaintiff

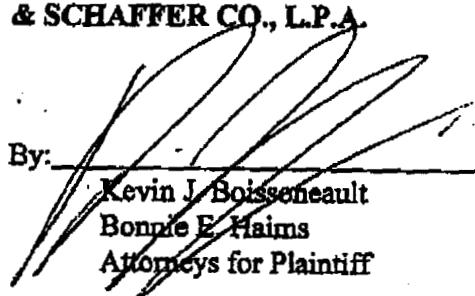
JURY DEMAND

Plaintiffs herein demand a trial by jury on all issues so triable in this action.

Respectfully submitted,

**GALLON, TAKACS, BOISSONEAULT
& SCHAFFER CO., L.P.A.**

By: _____


Kevin J. Boisseneault
Bonnie E. Haims
Attorneys for Plaintiff

8.1 Personal Injury\COMPLAINT\Complaints\rcarcia.r616.wpd

Law Office Of
GALLON, TAKACS, BOISSONEAULT
& SCHAFFER CO., L.P.A.
JACK GALLON BUILDING
114 GRANITE CIRCLE
EDO, OHIO 43017-4172